

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ANGELO FOTI,)	Case No.: 1:05 CV 1019
)	
Petitioner)	JUDGE SOLOMON OLIVER, JR.
)	
v.)	
)	
DAVID BOBBY, WARDEN,)	
)	
Respondent)	<u>ORDER</u>

On April 21, 2005, Petitioner Angelo Foti (hereinafter, “Foti” or “Petitioner”) filed a Petition for Writ of Habeas Corpus (ECF No. 1) pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his state court jury trial conviction for two counts of corrupting another with drugs and two counts of receiving stolen property. Petitioner presented four grounds for relief: (1) that he was denied his right under an international treaty to be assisted by Italian representatives during his criminal proceedings and to be informed of this right by the state; (2) that he was unconstitutionally sentenced because the trial court relied on facts not found by the jury or admitted by Petitioner when sentencing him in violation of *Blakely v. Washington*, 542 U.S. 296 (2004), a case decided after he was sentenced; (3) that he received ineffective assistance of counsel on his direct appeal; and (4) that he also received ineffective assistance of counsel during his Rule 26(B) application for reopening his appeal. Respondent David Bobby filed a Return of Writ on October

5, 2005, and argued that the entire Petition should be dismissed as unexhausted. (ECF No. 12.) Foti filed a traverse on October 21, 2005. (ECF No. 13.)

This court referred the case to Magistrate Judge William H. Baughman, Jr. for preparation of a Report and Recommendation. The Magistrate Judge submitted his Report and Recommendation on March 16, 2007, recommending that Foti's Petition for Habeas Corpus under 28 U.S.C. § 2254 be dismissed. (ECF No.16.) The Magistrate Judge found that Petitioner's First and Third grounds for relief should be dismissed for failure to state a cognizable claim for habeas relief. (R&R 4-5.) The Magistrate Judge concluded, in regard to Petitioner's Second and Fourth grounds for relief, that these claims were procedurally defaulted and therefore should be dismissed. (R&R 6, 10.)

As of the date of this Order, Petitioner has not filed objections to the Report and Recommendation.¹ By failing to do so, he has waived the right to appeal the Magistrate Judge's recommendation. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).

The court finds, after careful review of the Magistrate Judge's Report and Recommendation and all other relevant documents, that the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation. (ECF No. 16.) Foti's Petition for Writ of Habeas Corpus is hereby dismissed. The court further certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this

¹ Notice of the Magistrate Judge's Report and Recommendation was mailed to Foti at the last know address provided by him to this court: Trumbell Correctional, P.O. Box 901, Leavittsburg, OH 44430. That mailing was returned to sender on March 22, 2007. (See ECF No. 18.) Foti has not provided this court with a forwarding address.

decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

May 31, 2007